

and 2x6 boards some 150 feet to start the framing process. Claimant was an experienced construction worker having performed that type of work since 1974.

Claimant testified he had worked for approximately three hours on January 8, 1998, when he developed pain and discomfort in his right wrist and thumb. Although the pain worsened, claimant was able to finish the working day. However, the pain and discomfort remained the next morning, and claimant missed four days before he returned to work.

Claimant testified the pain and discomfort improved during the four days he did not work. But, when he returned to work, the pain and discomfort also returned, and it worsened as he continued to work. He was, however, able to finish this second day of work.

The following day claimant was unable to work and notified the respondent of his injury. Respondent sent the claimant to StatCare-Family Minor Emergency Center in Salina, Kansas. Claimant was seen on January 15, 1998, by Michael Lum, D.O. Dr. Lum diagnosed claimant with de Quervain's tenosynovitis of the right wrist and thumb. The doctor took claimant off work for one week, prescribed a thumb splint and medication.

Claimant returned to see Dr. Lum on January 22, 1998. Claimant reported his pain had decreased while he was wearing the thumb splint but returned when he removed the splint. Dr. Lum noted claimant could return to light duty, but claimant indicated none was available. The doctor recommended a referral to an orthopedic surgeon for consultation. However, respondent later notified Dr. Lum it was denying the claim and he was not authorized to treat the claimant.

The preliminary hearing was held in this matter on April 1, 1998. Claimant requested medical treatment and temporary total disability benefits. Claimant testified, and Dr. Lum's medical treatment records were offered and admitted into evidence. At the conclusion of the preliminary hearing, the Administrative Law Judge appointed hand and upper extremity surgeon J. Mark Melhorn, M.D. to perform an independent medical examination of claimant.

Dr. Melhorn first saw claimant on April 23, 1998. The doctor diagnosed right de Quervain's and requested claimant undergo a nerve conduction test (NCT). Claimant returned to Dr. Melhorn on May 1, 1998. The NCT was normal. At that visit, the doctor's impression was preexisting tendonitis accentuated by claimant's work activities. Claimant received an injection in the injured thumb area and was returned to regular work with a follow-up appointment in three weeks.

After the Administrative Law Judge received the independent medical examination report from Dr. Melhorn and further comments from the parties, the Administrative Law Judge entered the preliminary hearing Order which is the subject of this appeal on May 18, 1998. He found claimant had failed to establish that his preexisting condition was

aggravated, intensified, or accelerated by the limited work activities he performed for the respondent during the two days he worked.

The Appeals Board agrees the medical records contained in the preliminary hearing record show claimant had a preexisting condition of either de Quervain's tenosynovitis or tendonitis. However, the Appeals Board finds claimant's testimony established that his preexisting condition was asymptomatic before he started working for the respondent. Then, after three hours of working as a construction laborer, claimant's right wrist and thumb became symptomatic. The Appeals Board is mindful claimant alleges he became symptomatic after only a short period of time performing construction work for the respondent. Nevertheless, the Appeals Board finds claimant's testimony at the preliminary hearing was consistent with the history and complaints he related to both Drs. Lum and Melhorn. The Appeals Board finds nothing in the preliminary hearing record that raises a question about claimant's credibility.

Therefore, the Appeals Board finds the preliminary hearing record as a whole proves that claimant either aggravated or intensified a preexisting condition while he performed his regular work activities for the respondent. A worker is entitled to workers compensation benefits when a preexisting condition is aggravated or accelerated by a work-related accident. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 1, 573 P.2d 1036 (1978). Accordingly, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be and is, reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bruce E. Moore's preliminary hearing Order dated May 18, 1998, should be and is hereby, reversed, and this matter is remanded to the Administrative Law Judge for a determination of claimant's entitlement to the requested preliminary hearing benefits.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Scott M. Price, Salina, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director